

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

MIKE NELSON COMPANY, INC., a
California Corporation,

Plaintiff,

v.

WESTON HATHAWAY, and DOES
1 through 10,

Defendants.

CIV F 05-0208 AWI DLB

ORDER VACATING APRIL 21,
2005 HEARING DATE AND
GRANTING PLAINTIFF'S
MOTION FOR RELIEF FROM
UNTIMELY DEMAND FOR JURY

(Document 70)

This action arises from the construction of the federal courthouse in Fresno, CA and an agreement involving the purchase, supply and delivery of building materials that Plaintiff alleges Defendant breached.

On February 14, 2005, Defendant removed this action to this court from the Fresno County Superior Court.

On March 11, 2005, Plaintiff filed a first amended complaint where "Demand for Jury Trial" was included within the caption and "For a jury trial" was included within the prayer.

In September 2005, Defendant filed its answer.

On February 01, 2006, Defendant filed a motion to dismiss and motion to strike alleging

1 Plaintiff failed to make a timely jury demand or in the alternative that Plaintiff's third amended
2 complaint contains irrelevant and immaterial information.

3 On March 02, 2006, Plaintiff filed the instant motion for relief from waiver of untimely
4 demand for jury trial.

5 On March 14, 2006, Defendant filed a motion to withdraw its motion to dismiss and
6 motion to strike, thereby stipulating to Plaintiff's motion for relief from waiver. On March 22,
7 2006, the Court granted Defendant's request/motion.

8 In light of Defendant's withdraw/dismissal of these motions, Plaintiff's instant motion is
9 now undisputed and therefore is GRANTED.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The April 21, 2006, hearing in this matter is VACATED; and
12 2. Plaintiff's motion for relief from waiver of untimely demand for jury trial is
13 GRANTED. This action shall be tried to a jury.

14
15 IT IS SO ORDERED.

16 **Dated: April 25, 2006**
17 3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE